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OFFICE OF PETITIONS

In re Patent of Bosch et al.	: DECISION ON REQUEST
Patent No. 7,521,068	: FOR
Issue Date: April 21, 2009	: RECONSIDERATION OF
Application No. 09/190,138	: PATENT TERM ADJUSTMENT
Filed: November 12, 1998	: and
Atty Docket No. 029318/0109	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 19, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred forty-seven (1247) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred forty-seven (1247) days is **GRANTED**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). This fee is required and will not be refunded. No additional fees are required.

Patentees explicitly object to the Office's entry of a 120 day reduction in patent term adjustment for an amendment filed December 22, 2008.

Patentees implicitly object to the Office's entry of a 32 day reduction in patent term adjustment for an Amended Appeal Brief, filed July 30, 2007.

Patentees assert the patent term adjustment should be increased as a result of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay").

With respect to the December 22, 2008 amendment after Notice of Allowance, it is apparent from a review of the Office communication mailed December 19, 2008 that the examiner of record explicitly requested patentees file the amendment in question. Therefore, no reduction is

warranted pursuant to 37 CFR 1.704(c)(10). Accordingly, the 120 day reduction is being removed.


With respect to the July 30, 2007 Amended Brief on Appeal, ordinarily there are no reductions during the appeal period. It is noted that the Board of Patent Appeals and Interferences issued a decision in favor of patentees on June 23, 2008 and reversed the examiner. No reduction is warranted for the July 30, 2007 Amended Brief of Appeal. Accordingly, the 32 day reduction is being removed.

With respect to the assertion that patentees are due an adjustment for B Delay, patentees have not made a specific request as to the number of days they desire. The Office has determined the number of days of B Delay is 0 days. Applicants filed a CPA on June 5, 2001. This was a new application under 37 CFR 1.53(d) and required an express abandonment of the original application, filed November 12, 1998. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The period of B Delay in this case is 0 days, because a RCE was filed on October 15, 2002, which is within the three years of the filing date of the CPA. *See* 37 CFR 1.703(b).

The correct patent term adjustment is 1247 days, which is the sum of 1441 and 82 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and reduced by 276 days of Applicant delay.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred forty-seven (1247) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.


Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,521,068 B2

DATED : April 21, 2009

DRAFT

INVENTOR(S) : Bosch et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1095 days

Delete the phrase "by 1095 days" and insert -- by 1247 days--